

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Samuel Der-Yeghiayan	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 5163	DATE	1/19/2012
CASE TITLE	Calvin L. Merritte ®-53322) vs. Thomas Templeton, et al.		

DOCKET ENTRY TEXT

For the reasons stated below, Plaintiff's motions for leave to proceed *in forma pauperis* and motion for reconsideration [44], [45] are denied. The court also notes that on August 25, 2010, the court denied Plaintiff's motion for appointment of counsel. The circumstances have not changed at this juncture and to the extent that Plaintiff's filings can be construed as a renewed motion for appointment of counsel, that motion is denied. Plaintiff has also filed a motion for leave to file an amended and supplemented complaint and that motion [46] is denied as moot.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

This matter is before the court on Plaintiff Calvin L. Merritte's (Merritte) motions for leave to proceed *in forma pauperis* and motion for reconsideration. On August 25, 2010, this court denied Merritte's motion for leave to proceed *in forma pauperis*. The court gave Merritte until September 29, 2010, to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. The court also warned Merritte that failure to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by September 29, 2010, would result in the dismissal of the instant action. Merritte did not pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement by September 29, 2010, and on October 12, 2010, this court dismissed this action.

Based on the docket, it appears that subsequent to the court's dismissal of the action, Merritte has sent to the Clerk of Court a document titled "Relief From a Judgement or Order," which was entered on the docket as an October 26, 2010 filing. Merritte, however, did not notice up the October 26, 2010, filing or otherwise bring the filing to the attention of this court. The docket also reflects that on November 1, 2010,

STATEMENT

Merritte filed an appeal in this action. On September 19, 2011, the Seventh Circuit ordered Merritte to file a memorandum explaining why his appeal should not be stayed as premature, pending the resolution of the October 26, 2010 filing, which the Seventh Circuit indicated could be interpreted as a motion for reconsideration brought pursuant to Federal Rule of Civil Procedure 59(e). The Seventh Circuit also ordered that a copy of the order be forwarded to this court.

On September 30, 2011, this court indicated that it would consider Merritte's October 26, 2010 filing as a motion for reconsideration as the Seventh Circuit had indicated, and the court gave Merritte one final opportunity to either pay the filing fee or file an accurately and properly completed *in forma pauperis* application form with a certified copy of his prison trust fund account statement. Merritte filed such an *in forma pauperis* application and indicates in his *in forma pauperis* application form that he has received \$4,721.00 in gifts and \$830.97 from other sources in the last twelve months. A review of Merritte's prison trust account certificate shows that Merritte's average monthly deposits in the past six months was \$260.64. The court notes that Merritte is incarcerated and is provided with the necessities of life, and he has not shown that he is unable to pay the filing fee, given his income. *See Lumbert v. Illinois Dept. of Corrections*, 827 F.2d 257, 260 (7th Cir. 1987)(stating that the plaintiff inmate was "not being asked to give up any necessities of life; they in any event [were] being bought for him by the State of Illinois"). Therefore, Merritte's motion for leave to proceed *in forma pauperis* and motion for reconsideration are denied.

The court also notes that on August 25, 2010, the court denied Merritte's motion for appointment of counsel. The circumstances have not changed at this juncture and to the extent that Merritte's filings can be construed as a renewed motion for appointment of counsel, that motion is denied. Merritte has also filed a motion for leave to file an amended and supplemented complaint and that motion is denied as moot.